



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,463	10/20/2003	Hans Michael Ockenfels	01840.0001-US-01	4148

22865 7590 04/16/2007
ALTERA LAW GROUP, LLC
6500 CITY WEST PARKWAY
SUITE 100
MINNEAPOLIS, MN 55344-7704

EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
----------	--------------

3735

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/689,463

Applicant(s)

OCKENFELS, HANS MICHAEL

Examiner

david shay

Art Unit

3735.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on March 4, 2007
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10, 11, 14-20, 22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 11, 14-20, 22, and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Applicant argues that Anderson et al provides radiation “that is always set to the same level” and thus does not read on the claims. The examiner must respectfully disagree. Anderson et al disclose using the fluorescence generated by the treatment pulse to determine whether or not an additional treatment pulse should be directed to the plaque (see column 15, lines 37-48), the fluorescence from which is then used to determine whether or not another further pulse should be directed to the affected area. Thus clearly, thicker plaques will exhibit fluorescence after more treatments than thinner plaques and will subsequently be provided with greater (e.g. varied) doses during a treatment, depending on the thickness thereof. Anderson et al also teach controlling the treatment of an area based on the redness thereof. Since the stated goal of Anderson et al is to “greatly reduce the number of treatments necessary to clear the psoriasis, from about 25 to about 5 to 10” clearly multiple treatments are contemplated thereby.

With respect to the teachings of Chernoff, it is respectfully noted that since Anderson et al discuss skin thickness as a diagnostic criteria, there Chernoff does not need provide a motivation to determine skin thickness, as argues by applicant, thus this argument is not convincing. With regard to the teachings of Sator, applicant argues that Sator does not discuss regulating the treatment, however, since Anderson et al teach regulating the treatment, it is not necessary for Sator to do so as well. With regard to applicant’s arguments directed towards the Muller et al reference, applicant’s attention is respectfully invited to column 2, lines 28-31 thereof “[a]ccording to a further embodiment of the invention, it is also possible to conduct ultrasound via the waveguides from the distal end back to the proximal receiver and therefore use the instrument additionally for diagnosis”, thus applicant’s arguments must fail. Similarly, with respect to Boris, the teaching of Anderson et al to vary the treatment dosage is in the

Art Unit: 3735

context of a particular treatment within the treatment regimen. Anderson does not discuss how the treatment dosage from one treatment to the next should be applied, and Anderson et al teach that the maximum amount of radiation tolerable be applied, as this seems to yield less long term problems, thus this argument is also not convincing.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7, 11, 14, 16-19, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al in combination with Chernoff, Sator et al and Neigut. Anderson et al teaches treatment of psoriasis wherein the skin is tested, e.g. by determining skin thickness to determine psoriatic areas and the areas are exposed to treatment radiation, preferably so as not to cause blister formation, wherein the fluorescence generated by the treatment pulse is used to determine whether or not an additional treatment pulse should be directed to the plaque (see column 15, lines 37-48). Chernoff teaches a device and method for treating the skin wherein the skin depth is determined at each point of treatment and the treatment laser power is adjusted for the depth at each point. Sator et al teach that PUVA treated skin experiences accelerated thinning, which is correlated with the PUVA compared to the skin of people who have not undergone PUVA and that ultrasound is a sensitive and non-invasive method for determining skin thickness. Neigut teaches that psoriatic plaques reduce with treatment (see column 13, lines 14-34). It would have been obvious to the artisan or ordinary skill to use ultrasound to measure the skin thickness of patients in the method of Anderson et al, since this is a sensitive and non-invasive measure, as taught by Sato et al, and to employ the laser-ultrasound cooperation steps of Chernoff in the method, since this would enable the dosages to be

Art Unit: 3735

minimized for each patient by preventing the dosing of unaffected skin, and to vary the dosage with each treatment, since treatments reduce the plaques, thus reducing the required dosage to treat them under the regimen of Anderson et al, thus producing a device and method such as claimed.

Claims 8, 10, 20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al in combination with Chernoff, Sator et al, and Neigut as applied to claims 1-7, 11, 14, 16-19, and 23 above, and further in combination with Mueller et al. Mueller et al teach the incorporation of a laser and ultrasound applicator in a single instrument. It would have been obvious to the artisan of ordinary skill to provide the laser and ultrasound applicator in the combined method of Anderson et al in combination with Chernoff and Sator et al, since the separated ultrasound and laser applicators and combined applicators are equivalents, as shown by Mueller et al, or, alternatively, to employ the combined method of Anderson et al in combination with Chernoff and Sator et al in the method of Mueller et al, since Mueller et al discuss no therapy for any particular condition and in either case, to employ a mirror arm to conduct the radiation, since this is equivalent to the use of fiber optics and can more efficiently transmit ultraviolet light, official notice of which is hereby taken, thus producing a device such as claimed.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al in combination with Chernoff, Sator et al, and Neigut as applied to claims 1-7, 11, 14, 16-19, and 23 above, and further in combination with Bonis et al. Bonis et al teach increasing the dosage of UV light in psoriasis plaques that do not respond to a base level of therapy, and continuing the increase until a response is seen. It would have been obvious to the artisan of ordinary skill to

employ the dosage increase technique of Bonis et al in the combined method of Anderson et al in combination with Chernoff and Sator et al, since this yields better results, as taught by Bonis et al, thus producing a method and device such as claimed.

Applicant's arguments with respect to claims 1-8, 10, 11, 14-20, 22, and 23 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on Monday through Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3735

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330